

No. 19A

IN THE SUPREME COURT OF THE UNITED STATES

Kari Janae Phipps,
Applicant,

v.

State of Idaho,
Respondent.

**APPLICATION FOR AN EXTENSION OF TIME
WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI**

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March 6, 2020

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To the Honorable Elena Kagan, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Ninth Circuit:

Pursuant to this Court’s Rules 13.5, 22, and 30.3, Applicant Kari Janae Phipps requests a 60-day extension of time to file a petition for a writ of certiorari to review the judgment of the Idaho Supreme Court in this case, to May 18, 2020.

As discussed herein, this case presents an important federal constitutional question—whether this Court’s decision in *Michigan v. Summers*, 452 U.S. 692 (1981), authorizes the suspicionless detention of third parties during a parole search. Applicant requests this extension because she only recently retained undersigned counsel to assist her *pro bono* before this Court. Counsel has several court deadlines during the relevant period and needs additional time to prepare the type of concise, yet comprehensive petition that would aid this Court in determining whether to grant certiorari.

In support of this request, Applicant states as follows:

1. The Idaho Supreme Court issued its opinion on December 20, 2019. *See State v. Phipps*, 454 P.3d 1084 (Idaho 2019) (attached hereto as Attachment A). Absent extension, the time for filing a petition would thus expire on March 19, 2020. Consistent with Rule 13.5, this application has been filed at least 10 days before that date. This Court has jurisdiction over the case under 28 U.S.C. § 1257(a).

2. In *Michigan v. Summers*, 452 U.S. 692 (1981), this Court held that “a warrant to search for contraband founded on probable cause implicitly carries with it the limited authority to detain the occupants of the premises while a proper search is conducted.” *Id.* at 705 (footnote omitted). In the decision below, the Idaho Supreme Court held that *Summers* extends beyond the context of a search warrant, and authorizes the suspicionless detention of any third parties present during a routine parole search. The expansion of suspicionless searches from the limited context of search warrants to parole searches—a routine occurrence for tens of thousands of people—marks a dramatic expansion of the *Summers* exception.

3. As the Idaho Supreme Court acknowledged, its position accords with the Ninth Circuit. *See Phipps*, 454 P.3d at 1090 (adopting “the Ninth Circuit Court of Appeals’ extension of the *Summers* rule to permit the limited detention of ‘the occupants of a home during a parole or probation compliance search’”). That position is in direct conflict with several other courts which have declined to extend *Summers* to searches conducted as a condition of release, *see State v. Kaul*, 891 N.W.2d 352, 357 (N.D. 2017) (“We hold the *Summers* rule does not apply to a seizure of a non-

occupant incident to another individual's probationary search.”), or have limited *Summers* to residents even in the context of searches executed pursuant to a warrant, *see id.* at 356 (collecting cases).

4. Applicant intends to file a petition for certiorari asking this Court to resolve this constitutional issue. Applicant requests additional time to file the petition because she only recently retained the assistance of Supreme Court counsel, Amir H. Ali, to assist her *pro bono* before this Court. Counsel requires additional time to undertake the research and analysis that aids this Court in determining whether to add a case to its merits docket.

5. During the period of the sought extension, undersigned counsel also has several substantial briefing deadlines and oral arguments. These include:

- A reply in support of certiorari in the U.S. Supreme Court in *Rager v. United States*, No. 19-6410, to be filed by March 17, 2020;
- A reply in support of certiorari in the U.S. Supreme Court in *Shaffer v. Pennsylvania*, No. 19-618, to be filed by March 30, 2020;
- A brief in opposition to certiorari in the U.S. Supreme Court in *Cole v. Hunter*, No. 19-753, due April 1, 2020; and
- A petition for rehearing in the U.S. Court of Appeals for the Second Circuit in *Thompson v. City of New York*, No. 19-580, to be filed by April 9, 2020.

6. Applicant has not previously sought an extension of time from this Court.

7. For these reasons, Applicant respectfully requests that the time to file a petition for a writ of certiorari be extended to and including May 18, 2020.

Respectfully submitted,

A handwritten signature in blue ink, appearing to be 'Amir H. Ali', written over a horizontal line.

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